mission, again acknowledged that —

"a claim to establish rights and for nominal damages could not have been resisted and there would have been judgment by consent with negligible costs."

Since legal liability was thus clearly conceded. and since the Federal Court, nevertheless, held the appellants *not liable* on any ground whatsoever, we thought the respondents were entitled to a further appeal in order that justice may not only be done but be seen to be done.

Application allowed.

Solicitors: *Shearn, Delamore & Co.; Skrine & Co.*

MOHAMED ASHRAFF & ANOR. v. THE COMMISSIONER FOR FEDERAL CAPITAL, KUALA LUMPUR & ANOR.

[F.C. (Azmi L.P., Suffian and Ong Hock Sim F.JJ.) June 5, 1972]

[Kuala Lumpur —Federal Court Civil Appeal No. 40 of 1972]

Administrative Law — Certiorari — Audi alteram partem — Whether principle applies in respect of application to commissioner under Rent Control Act, 1966, s. 18A.

Practice and Procedure — Amendment at appellate stage — Substitution of title of party — Powers of the Federal Court — Courts of Judicature Act, 1964, s. 69.

Landlord and Tenant — Recovery of possession — Rent controlled premises — Area designated for development within Municipality of Federal Capital of Kuala Lumpur — Rent Tribunal no jurisdiction to entertain applications within such area — Power vested in Commissioner — Control of Rent Act, 1966 (as amended by Act A 87) ss. 12, 13, 18, 18A and 26.

This was an appeal against the decision of the learned Chief Justice, refusing an application for leave to apply for an order of *certiorari* to remove into the High Court an order of the Commissioner of the Federal Capital to be quashed. The said order was made on December 8, 1971, pursuant to section 18A of the Control of Rent Act, 1966, requiring Mohamed Ashraff, as tenant of premises No. 77 Jalan Tuanku Abdul Rahman, to deliver up vacant possession thereof on or before June 7, 1972, and awarding him compensation in the sum of $23,164.80.

The said premises was rented out to one Haji Mohamed Jee until his death intestate on April 18, 1970. The appellants, his sons, were granted letters of administration on October 19, 1971 but had not extracted the grant.

The only issue for determination was whether or not the principle of *audi alteram partem* or natural justice applied in respect of an application to the commissioner under section 18A of the Rent Control Act.

Held, dismissing the appeal: (1) section 18A of the Control of Rent Act, 1966 leaves no discretion with the commissioner upon proof of compliance with section 18A(1) (a), (b) and (c). In the absence of any provision as to the mode of inquiry, no question of failure to observe the principles of natural justice can arise. The commissioner's functions under section 18A appear to be purely administrative and any act pursuant thereto is not amenable to *certiorari;*

(2) pursuant to section 69 of the Courts of Judicature Act, 1964, the order of the commissioner would be amended by substituting for the word "tenant" wherever appearing. the words "the administrators of the estate of Haji Mohamed Jee".

Cases referred to:-

(1) *Lum See On* v. *Chan Kit Yong* [1956] M.L.J. 40 at p. 41.

(2) *Sweeney* v. *Sweeney* (1876) I.R. 10 C.L. 375.

(3) *Kechik & Ors.* v. *Habeeb Mohamed & Anor.* [1963] M.L.J. 127 at p. 129.

(4) *R.* v. *Ramsgate (Inhabitants)* (1827) 6 B. & C. 712; 108 E.R. 613.

(5) *R.* v. *Banbury (Inhabitants)* (1834) 1 A. & E. 136 at p. 142; 110 E.R. 1159.

FEDERAL COURT.

K. L. Rekhraj for the appellants.

Chan Siew Yoon for the first respondent.

V. P. Nathan for the second respondent.

In the court below, in an application for an order of *certiorari,* the following judgment was delivered by Ong C.J. on April 20, 1972:

Ong C.J. (Malaya): This is an application by the administrators of the estate of Haji Mohamed Jee deceased for leave to apply for an order of *certiorari* to remove into the High Court an order of the Federal Capital Commissioner to be quashed. The order complained of was one made on December 8, 1971 under the provisions of section 18A of the Control of Rent Act 1966 requiring Mohamed Ashraff, as tenant of premises No. 77, Jalan Tuanku Abdul Rahman, to deliver up vacant possession thereof on or before June 7, 1972 and awarding him compensation in the sum of $23,164.80.

This application was filed on Saturday April 15 and brought to my attention on April 18, upon a certificate of urgency submitted by Mr. Rekhraj. counsel for the administrators. He and his clients had been aware of the commissioner's order the day it was made, but despite the fact that they took no steps in the matter for over 4 months, I agreed to hear this application on April 20 on grounds of urgency, so that the applicants may have time to appeal against any decision I may have to make.

The relevant provisions of section 18A read as follows: —

"(1) The landlord of any controlled premises within the areas of the Municipality of the Federal Capital of Kuala Lumpur who desires to effect or cause to be effected thereto any development may apply for the recovery of the possession thereof to the Commissioner, and every such application shall be accompanied by —

(a) a planning permission which has been granted by the Federal Capital Planning Authority constituted under the law relating to planning for the Federal Capital of Kuala Lumpur;

(b) evidence that funds are or will be available for the purpose of putting into effect such development;

(c) a written undertaking by the landlord that work for the purpose of putting into effect such development will commence within six months of the date when possession of the premises shall have been obtained or within such further period as the Commissioner may determine in any particular case.

(2) The Commissioner shall, as soon as possible but not later than ninety days of receipt of an application made under this section, and after making such enquiries as he thinks fit, consider such application and make an order or refuse to make an order; and when an order is made the

Commissioner shall award to the tenant against whom the order is made a compensation —

(a) in the case of a controlled premises or part thereof occupied or used for trade purposes as defined in sub-section (13) a total of four years' rental;

x x x x x

(12) Any order made by the Commissioner under this section shall be final and conclusive and shall not be questioned in any Court.

x x x x x".

Ruken binte Kamerali is the owner and landlord of the premises, in which Haji Mohamed Jee carried on the business of a hotel and restaurant until his death intestate on April 18, 1970. The applicants, his sons, were granted letters of administration on October 19, 1971 but had not yet extracted the grant. One of them, Mohamed Yunus, by his letter of May 12, 1970 to the landlord, stated that he was carrying on the business of his deceased father. On September 9, 1971 the landlord filed an application under section 18A. Under sub-section (2) the commissioner had to dispose of the application, one way or another, on or before December 8, 1971. Doubtless, by reason of his letter of May 12, 1970, Mohamed Yunus was looked upon as the person to be notified of the application. The hearing was fixed for December 6, 1971 and notice thereof was conveyed to Mohamed Yunus on Saturday, December 4. Mr. Rekhraj, who was retained by the applicants, arrived 5 minutes after the application was disposed of on December 6. The law officer conducting the inquiry heard the objections raised by Mr. Rekhraj and asked him to "write in before the order is made". Apparently nothing was done in that regard and the commissioner duly made his order on December 8, 1971.

The main grounds of complaint raised by the applicants are (a) the short notice and no proper service thereof; (b) that the legal representatives of the deceased are the true tenants of the premises and not Mohamed Ashraff who was served with the order; (c) that the provisions of sub-sections (1), (2) and (3) of section 18A of the Control of Rent Act made it incumbent on the commissioner to inquire into the *bona fides* of the landlord; (d) that the order was made without vouchsafing to the tenants an opportunity of being heard in opposition to the application and (e) that, in sum, the order made on December 8, 1971 was void, ineffective and not binding on the applicants as contrary to the provisions of section 18A of the Act and in violation of Article 8 of the Constitution.

In my opinion there is but one question to be determined on this application: whether or not the principles of natural justice need be observed when the Commissioner considers any application made by a landlord under section 18A. If the tenants are required to be heard *contra* — and it is not in dispute that they had not been given the opportunity to oppose the application — then the order of the commissioner was one that should not have been made and, having been made in disregard of natural justice, ought to be set aside.

It will be observed that a Rent Tribunal is set up under the Act and in all proceedings before the tribunal provisions are made for all interested parties to be heard: for present purposes see P.U. 50, Control of Rent (Municipality of the Federal Capital of Kuala Lumpur) (Rent Tribunal) Rules 1967. Section 13 of the Act sets out the powers exercisable by tribunals in various types of applications, including applications under section 18 for repossession by landlords of controlled premises. In such cases, of course, the rules apply. Section 18A, however, is a radical amendment introduced into the Act with effect from October 1, 1971, having special reference to premises within the Municipality of Kuala Lumpur. For the "tribunal" the "commissioner" has been substituted and provision is made in sub-section (2) of section 18A for the commissioner *"after making such inquiries as he thinks fit,* (to) consider the application and make an order or refuse an order . . . ".

The Rules published in P.U. 50 were specifically *for Rent Tribunals,* so that, in my view, those rules are not applicable where the landlord applies for decontrol under the provisions of section 18A; in such a case the decision rests solely with the commissioner, who is entrusted with both the power and duty of "making such inquiries as he thinks fit."

In this connection it is, I think, relevant to note that the commissioner has to act in conformity with such directions on policy as may be given him by the Minister: see sub-section (11) which reads: —

"(11) The Minister charged with responsibility for local government may from time to time give the Commissioner directions of a general character, and not inconsistent with this section on the policy to be followed in the exercise of the powers conferred and the duties imposed on the Commissioner by or under that section and the Commissioner shall as soon as possible give effect to all such directions".

Parliament has further declared by sub-section (12) that the commissioner's decision under section 18A shall be final and conclusive and shall not be questioned in any court. By this provision is it the intention of Parliament that decisions of the commissioner shall be free of surveillance and control by the courts? I have given this point the most anxious consideration, and not without some misgivings have come to the conclusion that the answer must be in the affirmative for this reason. Rent control has for several decades seriously encroached upon the common law rights of landlords. In the public interest Parliament had thought fit to put shackles upon the rights of the landlord of controlled premises to deal with his property as he deems fit. Decontrol is nothing more than a measure to restore those rights to their pristine fulness. Section 18A is clearly one of those measures. It imposes three conditions to be fulfilled by landlords. Once they succeed in so doing, my view is that tenants have no say at all in the matter. The discretion of the commissioner whether or not to make an order is of a limited nature. The conditions imposed by paragraphs (b) and (c) are such that the evidence of future financial capability on the part of the landlord to carry out the proposed development may leave the commissioner in doubt regarding its feasibility. Then, of course, it would be right and proper for him to make no order. Where, however, the evidence offered is satisfactory, I think it would be an abuse of his powers

to reject any application, since proof of compliance with paragraphs (b) and (c) leaves him with no discretion at all unless he deliberately ignores the law. Such proof is purely a question of fact. In making up his mind the commissioner would not, I think, be carrying out a judicial or quasi-judicial duty.

Accordingly I am of opinion that this is not a fit and proper case for *certiorari* and I refuse leave to apply for such order.

The applicants appealed against the refusal of the learned Chief Justice to the Federal Court.

Ong Hock Sim F.J. (delivering judgment of the court): This is an appeal against the decision of the learned Chief Justice, Malaya, given on April 20, 1972, refusing an application for leave to apply for an order of *certiorari* to remove into the High Court an order of the Commissioner of the Federal Capital to be quashed. That order was made on December 8, 1971 pursuant to section 18A of the Control of Rent Act, 1966 requiring Mohamed Ashraff, as tenant of premises No. 77, Jalan Tuanku Abdul Rahman, to deliver up vacant possession thereof on or before June 7, 1972 and awarding him compensation in the sum of $23,164.80.

Premises No. 77, Jalan Tuanku Abdul Rahman, was rented out to Haji Mohamed Jee who carried on the business of a hotel-cum-restaurant therein until his death intestate on April 18, 1970. The appellants, his sons, were granted letters of administration on October 19, 1971 but had not to date extracted the grant. The second appellant, by letter of May 12, 1970, informed the owner of the premises of the death of his father and that he had taken over the business of the deceased. On September 9, 1971, the owner applied under section 18A for recovery of possession of the premises for the purpose of effecting development thereto. Hearing of the application was fixed for December 6, 1971 and, by reason of his letter of May 12, 1970, notice thereof, albeit late, was conveyed to the second appellant on Saturday, December 4. The application was disposed of on December 6 in the absence of Mr. Rekhraj, counsel for the appellants, who arrived 5 minutes after the conclusion of the proceedings. The officer conducting the inquiry heard objections raised by Mr. Rekhraj. On Monday, December 8, 1971 the commissioner made his order.

Some five grounds for complaint against that order were urged but we find ourselves in agreement with the Chief Justice that there was only one issue for determination — whether or not the principle of *audi alteram partem* or natural justice applies in respect of an application to the commissioner under section 18A. Before us, substantially the same issues were raised and also the question who should be regarded as tenant after the demise of Haji Mohamed Jee. This second part was not dealt with by the Chief Justice and we do not think it needs an answer, if the main issue were resolved. However at the outset, it was brought to our attention that the appellants could not in truth describe themselves as administrators of the estate of Haji Mohamed Jee, as it is admitted that they have not extracted the grant by reason of extra duty assessment. We do not consider objection on this score can be seriously maintained. Whyatt C.J. in *Lum See On* v. *Chan Kit Yong*[1] quoted Dowse B. in *Sweeney* v. *Sweeney*[2]:

"Why should he (the landlord) be placed in a worse position by the death of the tenant than he would have been if the tenant had lived? ... When the tenant is dead, the landlord should be entitled to treat the person he finds in possession as the representative of the estate and deal with him and it accordingly."

Thomson C.J. (as he then was) also referred to the same case in *Kechik & Ors.* v. *Habeeb Mohamed & Anor.*[3]:

"Since the decision of *Rees* v. *Perrot* (1830) 4 C & P 230; 172 E.R. 683, it has been accepted as settled law that on the death of a tenant from year to year, the landlord is not bound to raise a personal representative to the deceased tenant as a condition precedent to the determination of the tenancy by a notice to quit: he can, in the absence of a personal representative, treat the party in possession as a tenant to all intents and purposes."

The facts show that both appellants were aware of the proceedings. Notice of hearing was clearly inadequate. They were equally clearly not "heard". What has to be decided is whether they have a right to be heard in proceedings under section 18A.

Act A87 made a radical amendment to the Control of Rent Act, 1966 and introduced with effect from October 1, 1971 by section 18A a simplified and expeditious method of recovery of possession for the purpose of development of controlled premises within the area of the Municipality of the Federal Capital of Kuala Lumpur. We are of the view that the arguments of appellants' counsel would deserve very serious consideration if it concerned any application before the amendment. Our duty in this instance is clear. We have to abide by the ordinary rules in construing the effect of the amendments introduced by Act A87. As is said by Bayley J.:

"It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed."

[*R.* v. *Ramsgate* (*Inhabitants*)[4]]. The rule of construction is —

"to intend the legislature to have meant what is actually expressed."

(*per* Parke, J. in *R.* v. *Banbury*[5]).

Section 12(1), as amended, makes it clear that a rent tribunal established thereunder is not to deal with an application under section 18A. A rent tribunal vested with powers under section 13 to make an order under paragraph (e) for the recovery of possession of controlled premises for purpose of development in accordance with section 18 is limited to applications in respect of controlled premises "other than those within the areas of the Municipality of the Federal Capital of Kuala Lumpur." Pursuant to section 26(a), the practice and procedure of rent tribunals was regulated by the Control of Rent (Municipality of the Federal Capital of Kuala Lumpur) (Rent Tribunal) Rules 1967. If these rules were intended to apply in respect of applications under section 18A to the commissioner, a short notification to that effect is all that would be necessary. Without such a notification, it is not competent for us to say that they ought to apply. We are also in agreement with the Chief

Justice that section 18A leaves no discretion with the commissioner upon proof of compliance with section 18A (1)(a)(b) and (c) already quoted in his judgment. In the absence of any provision as to the mode of inquiry, we are of the view that no question of failure to observe the principles of natural justice can arise. The commissioner's functions under section 18A appear to us to be purely administrative and any act pursuant thereto is not amenable to *certiorari*.

The appeal is therefore dismissed. Pursuant to section 69 of the Courts of Judicature Act 1964, we would amend the order of the commissioner by substituting for the "tenant", wherever the word appears the words "the administrators of the estate of Haji Mohamed Jee @ Haji Mohd Jee". With regard to costs, we order that the sum of $500 deposited in court be paid out in the sum of $250 each to the first and second respondents.

Appeal dismissed.

Solicitors: *K. L. Rekhraj & Co.; Shook Lin & Bok; Richard Talalla & Co.*

PUBLIC PROSECUTOR v. CHANG SIEW MENG

[A.Cr.J. (Abdul Hamid J.) June 9, 1972]

[Kuala Lumpur — Selangor Criminal Appeal No. 6 of 1972]

Road Traffic — Heavy vehicle — Duty of care and attention — Road Traffic Ordinance, 1958, s. 36(1).

Criminal Law and Procedure — Driving heavy vehicle without due care and attention — Sentence as public interest.

In this case the respondent was convicted of driving a motor bus without due care and attention an offence under section 36(1) of the Road Traffic Ordinance, 1958. He was fined $120.

The Public Prosecutor appealed against the inadequacy of sentence.

Held, allowing the appeal: where the driver had driven a bus without due care and attention and had caused extensive damage to another vehicle, the magistrate in the interest of the public, in imposing sentence should have imposed a fine which should have some deterrent effect. Fine increased to $300.

MAGISTRATE'S CRIMINAL APPEAL.

Tengku Suleiman bin Sultan Ismail (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Abdul Hamid J. (delivering oral judgment): This is an appeal by the Public Prosecutor against the inadequacy of sentence.

The respondent was charged for driving a motor bus BD 6404 without due care and attention, an offence punishable under s.36(1) of the Road Traffic Ordinance, 1958. He was convicted and sentenced to a fine of $120.

In the grounds of judgment, the magistrate stated that she considered the fine as fair, reasonable and adequate punishment. She further stated that she bore in mind the fact that the maximum fine was $500 and that the respondent had pleaded guilty and this itself was a mitigating factor.

In my view, this is a proper case for me to interfere with the sentence passed by the magistrate. The sentence was manifestly inadequate having regard to the facts and circumstances of this case.

The magistrate ought to have borne in mind that the respondent in this case was driving a heavy vehicle and, as such, he owed a very great duty to other road users. A person driving a vehicle of this nature is likely to cause untold damage if he does not drive with care and attention. In the instant case, the respondent had clearly driven the bus without due care and attention and had caused extensive damage to another vehicle. It is therefore in the interest of the public that in imposing sentence, the magistrate should have imposed a fine which would have some deterrent effect.

For these reasons, I would allow the appeal and substitute a fine of $300 in default one month's imprisonment. Endorsement of driving licence confirmed.

Appeal allowed.